

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
2001 AUG -7 P 3:06

HALE TRUCKS OF MARYLAND, LLC :

v. :

VOLVO COMMERCIAL FINANCE LLC :
THE AMERICAS, ET AL. :

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ORDER

Now pending is the Motion for Trial by Jury filed by Hale Truck Centers, LLC and Edwin F. Hale, Sr. (collectively "Hale"), which has been opposed by Volvo Trucks North America, Inc., Volvo Commercial Finance LLC The Americas, and Edward H. Brown collectively ("Volvo"). Applying the five factor test stated by Judge Payne in Vannoy v. Cooper, 872 F. Supp. 1485 (E.D. Va. 1995), I will grant the motion.

First, while some of the issues are complex, they are not beyond the ability of counsel and court to present to the jury with appropriate instructions, and there may well be issues of credibility more suitable for resolution through the collective wisdom of a jury. Second, there is no particular prejudice to Volvo, and third, there is no significant adverse effect on the court's docket, considering that the final round of summary judgment motions have not been resolved and no pretrial or trial date has been set. Fourth, while the motion was not filed until seven months after the complaint, it was filed as soon as counsel recognized their error, and at an early stage of discovery.

The fifth factor, the reason for the failure to make a timely request, is the only one that clearly weighs in Volvo's favor under the case law. Courts have been reluctant to grant motions under Rule 39(b) where the delay is the result of inadvertent mistake on the part of counsel.

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Ultimately, however, the decision is a matter of discretion for the trial judge. Weighing all the factors in this case leads to the conclusion that, on balance, the circumstances favor granting Hale's motion.

SO ORDERED this 7th day of August, 2001.

A handwritten signature in black ink, appearing to read "Catherine C. Blake", written over a horizontal line.

Catherine C. Blake
United States District Judge